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SUPREME COURT, U.S.

No. 06-1658

IN THE

Supreme Court of the United States

MADELINE M. LAMBERT,

Petitioner,

v.

CHARLES J. CRIST, JR., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Did the Florida Highway Patrol have probable cause to seize Lambert's vehicle on January 2, 2005 pursuant to the Florida Contraband Forfeiture Act?

II. Did the Florida Highway Patrol impound yard's mistaken release of Lambert's seized vehicle on January 3, 2005 "purge" the vehicle from being tainted as forfeitable contraband under the Florida Contraband Forfeiture Act?

III. Did the Florida Contraband Forfeiture Act provide Lambert with a sufficient post-deprivation remedy so as not to violate her Fourth Amendment and due process rights?

LIST OF PARTIES

The Respondents are:

Charles J. Crist, Jr., who was the former Attorney-General for the state of Florida, whose department represented the Florida Highway Patrol ("FHP") in the forfeiture action described herein;

Rosena Finklea, who is the FHP's assistant general counsel on forfeiture matters;

Yvette MacMillan, who is the FHP's assistant attorney-general for the state of Florida, who represented the FHP in the forfeiture proceedings described herein;

Robert Dietz is an assistant attorney-general for the state of Florida, who assisted MacMillan in the forfeiture proceedings described herein; and

Richard Moore, who is a state trooper with the FHP.

The Petitioner, Madeline M. Lambert, was the Plaintiff in the lower court proceedings in this case and the Appellant before the United States Court of Appeals for the Eleventh Circuit.

CORPORATE DISCLOSURE STATEMENT

The Respondents are not incorporated, and therefore have no parent corporations of which to disclose ownership.

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STATEMENT OF THE CASE

On January 2, 2005, Moore, a state trooper for the Florida Highway Patrol ("FHP"), arrested Steven Gaudreau for driving under the influence of alcohol and driving with a suspended driver's license.[1] At the time of the arrest, Gaudreau told Moore that he was staying with his sister, Madeline Lambert, and "just took [her] car."[2] Moore concluded that Lambert's vehicle was forfeitable under the Florida Contraband Forfeiture Act ("FCFA"). Therefore, he seized the vehicle and had it towed to an FHP impound yard.

On January 3, 2005, the FHP impound yard released the vehicle to Lambert by mistake.

On January 12, 2005, Moore stopped Lambert's vehicle on a public highway and re-seized the vehicle because, as he explained to Lambert, the FHP impound yard had released her vehicle by mistake. Moore acted pursuant to an instruction from Finklea that he take back the vehicle because it had been mistakenly released and was needed for forfeiture proceedings under the FCFA. After he seized the vehicle, Moore gave Lambert a notice of seizure, which advised of her right to request a preliminary hearing pursuant to section 932.703(2)(a) of the Florida Statutes.

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[1] Lambert made no suggestion in her Amended Complaint that the arrest was in any way improper or unjustified.

[2] Lambert made no allegations in her Amended Complaint that, at the time of arrest, Gaudreau told Moore that he had taken the vehicle without Lambert's knowledge or that Lambert did not know nor had any reason to know that Gaudreau may drive the vehicle under the influence of alcohol.

On February 1, 2005, a preliminary hearing was held pursuant to the FCFA to determine whether probable cause existed to believe that the vehicle had been or was being used in violation of the FCFA. The judge held that the FHP had not established probable cause for the initial seizure because there was no evidence that Lambert knew or should have known that her brother was using her vehicle for an illegal purpose. The judge ordered the FHP to release her car. In other words, Lambert succeeded on her "innocent owner defense" pursuant to section 932.703(6)(a) of the Florida Statutes.

The FHP did not release the vehicle because it filed an appeal with the Second District Court of Appeal for the State of Florida. However, after the Second District Court of Appeal issued a per curiam affirmance of the Circuit Court's order, the FHP complied with the appeal court's order and released Lambert's vehicle. On February 13, 2006, Lambert was awarded attorney's fees and costs.

On March 16, 2006, Lambert filed a civil rights action in state court, later removed to federal court by the Respondents, claiming that her car's re-seizure and continued impoundment throughout the forfeiture action violated her Fourth Amendment right to be free from unreasonable searches and seizures, her Fifth and Fourteenth Amendment substantive due process rights, her corresponding rights under Article I, Sections 9 and 12 of the Florida Constitution, and the public policy contained in section 932.704(1) of the Florida Statutes.

On April 28, 2006, the Respondents moved to dismiss all of Lambert's claims, arguing that she failed to state a claim for relief because (1) Moore and Finklea were entitled to

qualified immunity for the seizure of her vehicle under the FCFA; (2) Dietz was entitled to absolute immunity for assisting MacMillan in prosecuting the forfeiture action; (3) Crist could not be held liable as a supervisor under 42 U.S.C. § 1983; (4) Lambert's due process rights were not violated; and (5) the FCFA does not create a private cause of action. On August 16, 2006, the District Court for the Middle District of Florida granted the Respondents' motion to dismiss. Lambert appealed, but the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's decision, adopting the court's reasoning.

REASONS FOR DENYING THE PETITION

The District Court dismissed Lambert's five-count amended complaint against the Respondents on the grounds that Moore and Finklea were entitled to qualified immunity, MacMillan and Dietz were entitled to absolute immunity, and Lambert failed to state a claim upon which relief may be granted against Crist for supervisor liability. Lambert claims that the District Court's decision should be reversed because probable cause is not transferable from one seizure to another, the mistaken release of Lambert's vehicle "purged it of being tainted as forfeitable contraband," and the FCFA does not preempt 42 U.S.C. § 1983. Accordingly, the Respondents will address each argument in turn.

I. Probable Cause Existed to Seize Lambert's Vehicle.

Lambert contends that probable cause is not transferable from one seizure to another. Specifically, Lambert claims that by stopping and re-seizing her vehicle without a warrant, probable cause, or exigent circumstances, Moore violated her Fourth Amendment right to be free from unreasonable

searches and seizures. Additionally, Lambert claims that when Finklea advised Moore to stop Lambert's vehicle under the pretext of a traffic stop and re-seize her vehicle regardless of whether Moore had a warrant, probable cause, or exigent circumstances, Finklea violated Lambert's Fourth Amendment right to be free from unreasonable searches and seizures.

Despite Lambert's focus on the re-seizure of her vehicle, the Respondents emphasize that the *initial* seizure of the vehicle controls the analysis of this appeal. Only the circumstances concerning the initial seizure are relevant because it is those circumstances that formed the basis for Moore to re-seize the car under the FCFA. The re-seizure was premised on the same grounds as the first seizure and was necessary only because the vehicle was mistakenly released by the FHP impound yard. Thus, the re-seizure could be based on the same probable cause that existed for the initial seizure.

In *Florida v. White*, 526 U.S. 559, 566 (1999), the United States Supreme Court held that the Fourth Amendment did not require the police to obtain a warrant before seizing an automobile from a public place when they had probable cause to believe that it was contraband under Florida's forfeiture laws. The Supreme Court's holding was based in part on *Carroll v. United States*, 267 U.S. 132, 149 (1925), which held that when federal officers have probable cause to believe that a vehicle contains contraband, the Fourth Amendment does not require them to obtain a warrant prior to searching or seizing the vehicle. In support of its holding, the Supreme Court explained that, "like the early federal statutes that we looked to in *Carroll*, the Florida Contraband Forfeiture Act authorized the warrantless seizure of both goods subject to

duties and the ships upon which those goods were concealed." *White*, 526 U.S. at 565; *see also United States v. Valdes*, 876 F.2d 1554, 1557 (11th Cir. 1989) (property can be seized without a warrant); *State v. Pomerance*, 434 So. 2d 329, 330 (Fla. 2d DCA 1983) (a warrant is not required under the FCFA to seize a vehicle).

Based on *White*, *Carroll*, *Valdes*, and *Pomerance*, Moore did not need a court order, warrant, or exigent circumstances to seize Lambert's vehicle lawfully, as long as he had probable cause to believe that it was contraband under the FCFA.[3] Although Lambert's vehicle was released on January 3, 2005, Lambert concedes that Moore told her at the time he took back her vehicle that the release was a mistake.[4] While Lambert claims there is no evidence that the impound yard was required to "hold" the vehicle, and that Lambert was not violating any traffic laws on January 12, 2005 when Moore re-seized the vehicle, these issues are irrelevant because the FCFA expressly authorizes personal property to be seized subsequent to the violation. *See* FLA. STAT. § 932.703(2)(a). In other words, Moore had the authority to re-seize Lambert's vehicle because he had probable cause to believe that the vehicle was used on January 2, 2005 in violation of the FCFA.

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[3] Moore also had express authority to seize Lambert's car the first time because D.U.I. is one of the enumerated offenses that subjects personal property to forfeiture. *See* FLA. STAT. § 932.703(2)(a).

[4] Lambert does not dispute the fact that the FHP impound yard mistakenly released the vehicle, nor does she allege that the release was not a mistake.

Lambert exercised her right to a preliminary hearing to challenge the seizure of her vehicle as forfeitable contraband under the FCFA. At the preliminary hearing, the FHP bore the initial burden of showing probable cause for the seizure. FLA. STAT. § 932.703(2)(a). In *In re Forfeiture of One Hundred Seventy-One Thousand Nine Hundred Dollars*, 711 So. 2d 1269, 1274 n.8 (Fla. 3d DCA 1998), the court held that the standard of probable cause to support forfeiture is less rigorous than the standard required to prove criminal conduct. Under the FCFA, probable cause requires only a showing of a "sufficient probability to warrant a reasonable belief" that the property was used in violation of the FCFA. *In re Forfeiture of One Hundred Seventy-One Thousand Nine Hundred Dollars*, 711 So. 2d 1269, 1274 n.8 (Fla. 3d DCA 1998); *In re Forfeiture of Forty-Seven Video Redemption Games*, 799 So. 2d 221, 222 (Fla. 2d DCA 2001). Probable cause requires more than mere suspicion, but less than *prima facie* proof, and it can be established through circumstantial evidence. *In re Forfeiture of One Hundred Seventy-One Thousand Nine Hundred Dollars*, 711 So. 2d 1269, 1274 n.8 (Fla. 3d DCA 1998).

Moore did not need actual knowledge of a violation of the FCFA to seize Lambert's vehicle on January 2, 2005; constructive knowledge was sufficient. *City of Daytona Beach v. Bush*, 742 So. 2d 335, 337 (Fla. 5th DCA 1999); *In re Forfeiture of 1987 Chevrolet*, 605 So. 2d 1322, 1323 (Fla. 1st DCA 1992). At the time Moore seized Lambert's vehicle, the circumstances known to him were sufficient for him to have a reasonable belief that the vehicle was being used in violation of the FCFA. Specifically, Gaudreau, Lambert's brother, told Moore only that he was "staying with Lambert and just took the car," and not that Lambert had no knowledge that he may use her vehicle or use it in violation

of the FCFA. Furthermore, Gaudreau was under the influence of alcohol at the time he made the statement, and for that reason alone Moore was under no obligation to believe him. As a law enforcement officer, Moore had the discretion to conclude that because Gaudreau was living with his sister at the time he drove her vehicle while under the influence of alcohol, there was a sufficient probability to warrant a reasonable belief that the vehicle was used in violation of the FCFA. Therefore, the vehicle was subject to immediate seizure without a warrant. *See* FLA. STAT. § 932.701(2)(a)(9) (driving under the influence of alcohol or drugs subjects a vehicle to seizure); *Florida v. White*, 526 U.S. 559, 565 (1999). Accordingly, Moore had probable cause to seize Lambert's vehicle under the FCFA, and Finklea's advice to Moore to re-seize Lambert's vehicle accorded with the FCFA because Moore had probable cause to seize the vehicle.

Lambert also contends that section 932.703(2)(a) of the Florida Statutes, which provides that "[p]ersonal property may be seized ... subsequent to the violation ..." did not provide Moore with the authority to re-seize Lambert's vehicle. She claims that this provision was intended to apply to situations where property could not be immediately seized at the time probable cause was established because the property could not be located, was transferred or sold to a third party, was outside the jurisdiction of the court, had substantially diminished in value, or had been co-mingled with any property which could not be easily divided. *See* FLA. STAT. § 932.703(5). In support of her argument, Lambert relies on section 932.703(5) of the Florida Statutes and Justice Stevens' dissenting opinion in *Florida v. White*, 526 U.S. 559, 571 (1999).

However, section 932.703(5) does not apply to Lambert's situation because this provision makes no mention of section 932.703(2)(a), and, instead, it requires only that the court "order the forfeiture of *any other property* of a claimant . . . if any of the property described in this section . . . (a) Cannot be located; (b) Has been transferred to, sold to, or deposited with a third party; (c) Has been placed beyond the jurisdiction of the court; (d) Has been substantially diminished in value by any act or omission of the person in possession of the property; or (e) Has been commingled with any property which cannot be divided without difficulty." (Emphasis added). Essentially, section 932.703(5) applies only to situations where an individual has in some way interfered with the ability of law enforcement to seize contraband. In that situation, section 932.703(5) requires the court to order the forfeiture of some other property owned by that individual, even though such property is not necessarily contraband.

Furthermore, Justice Stevens' dissenting opinion in *Florida v. White* that "a belated seizure may involve a serious intrusion on the rights of innocent persons" is neither persuasive nor controlling authority with respect to whether section 932.703(2)(a) authorized the re-seizure of Lambert's vehicle. *See* 526 U.S. 559, 571 (1999). To the contrary, in *Florida v. White*, the United States Supreme Court held that where police had developed probable cause to believe that a defendant's vehicle was subject to forfeiture under the FCFA *several months* prior to seizing the vehicle, the police were not required to obtain a warrant to effectuate the seizure under the FCFA. *See id.* at 561-62.

Lambert also contends that section 932.703(2)(a) of the Florida Statutes is ambiguous at best and should be strictly

construed against any loss and in favor of the owner's retention of property. While this rule of construction may apply in the context of forfeiture proceedings, it is irrelevant in the context of holding public officials liable for the alleged violation of Lambert's constitutional rights because to hold these officials liable, Lambert must prove that they violated a clearly established constitutional or statutory right, not a right which is "ambiguous." *See Rodgers v. Horsley*, 39 F.3d 308, 310-11 (11th Cir. 1994) (for a "right" to be clearly established, a plaintiff must identify pre-existing case law with "materially similar" facts which would make it "apparent" to the officials in this case that their actions were unlawful).

Lambert also contends that section 932.704(1) of the Florida Statutes prohibited Moore and Finklea from re-seizing her vehicle under a false pretext. In relevant part, section 932.704(1) provides that

> "[i]t is also the policy of this state that law enforcement agencies ensure that, in all seizures made under the Florida Contraband Forfeiture Act, their officers adhere to federal and state constitutional limitations regarding an individual's right to be free from unreasonable searches and seizures, including, but not limited to, the illegal use of stops based on pretext . . ."

Because FHP officials have observed the federal or state constitutional limitations regarding Lambert's Fourth Amendment rights, and because Moore did not re-seize Lambert's vehicle under a false pretext, but rather because he had probable cause to believe that it was subject to forfeiture, the Respondents fully complied with section 932.704(1).

Lambert also contends that the FHP impound yard's act of mistakenly releasing her vehicle "interrupted" the seizure, and therefore the re-seizure of the vehicle on January 12, 2005 constituted a "separate" seizure requiring a warrant supported by probable cause. However, Lambert does not rely upon case law concerning forfeiture actions or the FCFA to support her argument. Instead, she relies upon *United States v. Silverstri*, 787 F.2d 736, 740 (1st Cir. 1986), in which the First Circuit held that when a warrant arrives subsequent to illegal seizure of items previously observed, it does not effect legal seizure of those items because they cannot be legally seized unless police relinquish control of them, thereby establishing an independent basis for the re-seizure. *Silverstri* is inapposite to this case because Moore clearly had probable cause to seize Lambert's vehicle because it was subject to forfeiture under the FCFA, the seizure could be effectuated without a warrant, and the return of the vehicle was unintended.

Lambert argues at length that because the re-seizure was "separate," the FHP needed a warrant supported by sufficient probable cause based on "*new* or *different* facts from those supporting the initial seizure." Again, the cases Lambert cites do not involve civil forfeiture proceedings or the FCFA. *See Coolidge v. New Hampshire*, 403 U.S. 443, 481 (1971) ("[t]he rule that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions,' is not so frail that its continuing vitality depends on the fate of a supposed doctrine of warrantless arrest"); *United States v. Fuller*, 374 F.3d 617, 621-22 (8th Cir. 2004) (discussing the limited Fourth Amendment rights of a vehicle owner who has entrusted his vehicle to another); *United States v.*

Magluta, 418 F.3d 1166, 1182 (11th Cir. 2005) (holding that district court did not err in determining that law enforcement officers had probable cause to search the contents of the rental car of an associate of the defendant); *Murray v. United States*, 487 U.S. 533, 535, 543-44 (1988) (holding that to determine whether marijuana observed in plain view at time of unlawful entry and later seized during subsequent search pursuant to warrant was admissible under the independent source doctrine, the court on remand was required to determine whether government agents would have sought a warrant if they had not earlier entered the warehouse). Furthermore, Lambert's argument is flawed because she appears to be applying the "independent source doctrine," a doctrine inapplicable to the instant case because it did not involve a situation where the initial seizure of Lambert's vehicle was illegal and then FHP sought to re-seize her vehicle legally because it had discovered that the vehicle was contraband through an "independent source." *See Murray v. United States*, 487 U.S. 533, 538-39 ("[i]n the classic independent source situation, information which is received through an illegal source is considered to be cleanly obtained when it arrives through an independent source") (internal quotations and citations omitted). Rather, *Florida v. White*, as discussed *supra*, states the applicable standard in the instant case and clearly provides that a warrant was not required because there was probable cause to believe that Lambert's vehicle was subject to civil forfeiture.

Finally, Lambert contends that the probable cause to seize her vehicle initially was not transferable to the re-seizure of her vehicle. In support of her argument, Lambert cites several decisions which stand for the proposition that a search or seizure of a person must be supported by probable cause

particularized to that person. *See Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)

> "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be."

United States ex rel. Cabrera v. Page, 172 F. Supp. 2d 966, 979 (N.D. Ill. 2001) ("It was also established that probable cause is not transferred by association – that simply being in the company of a person suspected of crime is not probable cause to search or arrest."), *rev'd*, 324 F.3d 527 (7th Cir. 2003); *United States v. Rivers*, 121 F.3d 1043, 1045 (7th Cir. 1997) ("the court must keep in mind that 'a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person'"); *Swint v. City of Wadley, Alabama*, 5 F.3d 1435, 1444 (11th Cir. 1993) ("Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person."), *vacated*, 51 F.3d 988 (11th Cir. 1995). The cases Lambert cites do not support her proposition that "probable cause to seize should not be transferable from one seizure to another" in the context of a civil forfeiture action. Unlike this case, which involved probable cause particularized to Lambert's vehicle, the cases Lambert cites contemplate situations where an individual is subjected to a search or seizure only because he or she is associated with others who are involved in criminal activity. While Lambert

relies heavily upon dissenting opinions and cases which do not apply to civil forfeiture actions, she does not cite to any factually similar or relevant case to support her contention that the FHP needed a warrant supported by sufficient probable cause based on new or different facts from those supporting the initial seizure to re-seize her vehicle. For this reason alone, the Respondents are entitled to qualified immunity.

II. The Mistaken Release of Lambert's Vehicle Did Not "Purge It of Being Tainted as Forfeitable Contraband."

Relying upon *Murray*, *Silvestri*, and *White v. Florida*,[5] Lambert claims that the FHP impound yard's act of mistakenly releasing her vehicle on January 3, 2005 "purged it of being tainted as forfeitable contraband" because the act of releasing the vehicle interrupted the initial seizure. Therefore, Lambert claims that the re-seizure of the vehicle was a new, separate seizure which required Moore to have a warrant with probable cause based on new or different facts from those supporting the initial seizure. As discussed supra, *Murray* and *Silverstri* are inapposite to this case. Furthermore, Lambert's reliance on *White v. Florida*, which was reversed by the United States Supreme Court, does not demonstrate that Moore violated any of Lambert's constitutional rights by re-seizing her vehicle. Rather, section 932.703(2)(a) of the Florida Statutes and the United States Supreme Court's decision in *Florida v. White* clearly authorized Moore to seize Lambert's vehicle without a

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[5] *White v. Florida*, 753 So. 2d 548 (Fla. 1999) was later reversed by the United States Supreme Court in *Florida v. White*, 526 U.S 559 (1999).

warrant because he had reasonable cause to believe that her vehicle was still subject to forfeiture.

Lambert also contends that if her vehicle was still considered forfeitable contraband at the time Moore re-seized it on January 12, 2005, then her car could be released by mistake an unlimited number of times and re-seized each time at the "whim of law enforcement." Lambert claims that this situation would be substantially similar to an "open-ended" or "general search warrant" prohibited by the United States Supreme Court.

Lambert's argument that her car could be released mistakenly an unlimited number of times and re-seized at the discretion of law enforcement fails because her vehicle would not be subject to unlimited seizures at the whim of law enforcement. Instead, her vehicle would be subject to seizure only until it was determined in the forfeiture proceedings whether probable cause existed to seize her vehicle initially. If no probable cause was found, her vehicle would be released and would not be subjected to re-seizure on the same set of facts which caused the vehicle to be seized initially.

III. The FCFA Provided Lambert with a Sufficient Post-Deprivation Remedy so as Not to Violate Her Fourth Amendment and Due Process Rights Under the Constitution.

Lambert contends that the District Court erred in finding that Lambert's Fourth Amendment and due process rights were not violated because the FCFA provided her with a sufficient post-deprivation remedy. Lambert bases this

contention on the fact that the FCFA proceedings in her case focused on the initial rather than the re-seizure of her vehicle.[6]

Lambert's due process rights were not violated when Moore seized her vehicle pursuant to the FCFA because Lambert exercised her right to a preliminary hearing to challenge the seizure of her vehicle as forfeitable contraband. In *Department of Law Enforcement v. Real Property*, 588 So. 2d 957, 959 (Fla. 1991), the Florida Supreme Court held that the FCFA comports with substantive and procedural due process under the Florida Constitution. The Court also held that due process requires notice of any seizure or forfeiture be given to the property owner, along with notice of the right to contest a seizure by requesting an adversarial preliminary hearing. The Court also noted that the procedures in place for litigating forfeiture actions are contained within the FCFA, which the court found to be constitutional. Furthermore, federal due process, which does not provide for any greater protection than that provided by the Florida Constitution, is not violated when a party has a meaningful post-deprivation remedy available. *Lindsey v. Storey*, 936 F.2d 554, 561 (11th Cir. 1991) ("[e]ven assuming the continued retention of plaintiff's personal property is wrongful, no procedural due process violation has occurred 'if a meaningful postdeprivation remedy for the loss is available' ").

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[6] It is unclear how Lambert can argue that the forfeiture proceedings focused on the initial seizure and not the re-seizure of her vehicle because she conceded in her Amended Complaint that there was testimony regarding the re-seizure during the forfeiture proceedings. Presumably, because the court was aware of both the initial seizure and the re-seizure, the court's finding that Lambert was entitled to the "innocent owner defense" and its order to return Lambert's vehicle were done with the knowledge that the vehicle at issue was in the FHP's possession as a result of the re-seizure, not the initial seizure.

Here, Lambert concedes that Moore gave her a notice of seizure when he took back her vehicle on January 12, 2005. The notice advised her of her right to a preliminary hearing. Lambert also concedes that she successfully utilized the post-deprivation procedures set forth in the FCFA. She prevailed at the preliminary hearing, prevailed on appeal, received her vehicle back, and received an award of attorney's fees and costs. Therefore, Lambert had her "day in court." She cannot maintain an action for denial of procedural due process because she was provided with all of the due process that was required by law.

Accordingly, because the Respondents did not violate Lambert's Fourth Amendment rights and due process rights, the Eleventh Circuit's affirmance of the District Court's decision to dismiss Lambert's claims under 42 U.S.C. § 1983 should be affirmed.

A. *MacMillan and Dietz are Entitled to Absolute Immunity.*

Under the heading, "FCFA does not preempt 42 U.S.C. § 1983," Lambert attempts to argue that MacMillan and Dietz were not entitled to absolute immunity for their "tacit collaboration in the re-seizure" of Lambert's vehicle. Instead, Lambert claims they were entitled only to qualified immunity, which "could be overcome by showing their conduct violated clearly-established statutory or Constitutional rights of which a reasonable person would have known." However, MacMillan and Dietz are entitled to absolute immunity for the following reasons.

A prosecutor receives absolute immunity for acts "that are connected with the prosecutor's role in judicial

proceedings." *Burns v. Reed*, 500 U.S. 478, 494 (1991). Absolute immunity applies in the same fashion to non-prosecuting attorneys who perform functions analogous to a prosecutor, including those attorneys who decide to move forward with an administrative proceeding. *Butz v. Economou*, 438 U.S. 478, 515 (1978). Many different acts can entitle a prosecutor to absolute immunity. For example, absolute immunity applies to the initiation and pursuit of a prosecution, court appearances, in-court activity, preparation and filing of charging documents, and determinations that evidence demonstrates probable cause.[7] Moreover, absolute immunity applies in the context of non-criminal proceedings, including forfeiture proceedings.[8]

Lambert tries to avoid absolute immunity by alleging that MacMillan's and Dietz's refusal to release her vehicle constituted a "tacit collaboration" in the vehicle's re-seizure. However, the law is clear that MacMillan and Dietz were not obligated to return Lambert's vehicle while the forfeiture proceedings were pending. *See* FLA. STAT. § 932.703(1)(c) ("[a]ll rights to, interest in, and title to contraband articles

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[7] *See, e.g., Kalina v. Fletcher*, 522 U.S. 118, 120, 129 (1997); *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993); *Rowe v. Fort Lauderdale*, 279 F.3d 1271, 1279 (11th Cir. 2002); *Baez v. Hennessy*, 853 F.2d 73, 75 (2d Cir. 1988).

[8] *See, e.g., Smith v. Power*, 346 F.3d 740 (7th Cir. 2003) (absolute immunity for alleged retaliatory initiation of civil proceedings); *Cooper v. Parrish*, 203 F.3d 937 (6th Cir. 2000) (absolute immunity for preparing and filing public nuisance and civil forfeiture complaints); *Reitz v. County of Bucks*, 125 F.3d 139 (3d Cir. 1997) (absolute immunity for attorney who handled civil forfeitures); *Ehrlich v. Giuliani*, 910 F.2d 1220 (4th Cir. 1990) (absolute immunity for forfeiture proceedings, even if prosecutor inadvertently injures an innocent person).

used in violation of [§] 932.702 shall immediately vest in the seizing law enforcement agency upon seizure"). Contrary to Lambert's claims, neither the court, nor MacMillan, nor Dietz, had the jurisdiction to demand that Lambert's vehicle be returned to her while the forfeiture action was still pending. *See City of Coral Gables v. Valdes*, 582 So. 2d 148 (Fla. 3d DCA 1991) (trial court lacked jurisdiction to order the return of a vehicle that was seized less than ninety days before initiation of forfeiture proceedings); *McLane v. Youngblood*, 544 So. 2d 1179 (Fla. 2d DCA 1989) (owner denied possession of automobile during pendency of forfeiture proceedings). However, when the Second District Court of Appeal affirmed the circuit court's order directing the release of Lambert's vehicle, the litigation ended and the Respondents returned Lambert's vehicle and paid her attorney's fees and costs. Accordingly, MacMillan and Dietz are entitled to absolute immunity for their roles in prosecuting the forfeiture proceedings concerning Lambert's vehicle.

B. *Lambert Failed to State a Claim upon which Relief may be Granted for Supervisor Liability Against Crist.*

Under the heading, "FCFA does not preempt 42 U.S.C. § 1983," Lambert also attempts to argue that she has stated a claim upon which relief may be granted against Crist for "deliberate indifference" for failing to intervene after learning that a subordinate had violated her civil rights.

To allege supervisory liability via deliberate indifference, a plaintiff must allege that federal or state law imposed a duty on the supervisor to intervene, the supervisor had actual or constructive notice of unconstitutional practices carried out by his subordinates which triggered his duty to intervene,

yet deliberately failed to take such action, and that the supervisor's breach of duty was the proximate cause of the plaintiff's injury. *See Murphy v. New York Racing Association, Inc.*, 76 F. Supp. 2d 489, 500 (S.D.N.Y. 1999); *Brown v. Crawford*, 906 F.2d 667, 671 (11th Cir. 1990) ("Supervisory liability occurs either when the supervisor personally participates in the alleged constitutional violation or when there is a causal connection between actions of the supervising official and the alleged constitutional deprivation."); *Jones v. City of Chicago*, 856 F.2d 985, 992 (7th Cir. 1992) ("The supervisors must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of that they might see. They must in other words act either knowingly or with deliberate, reckless indifference.").

Deliberate indifference is a stringent standard of fault which requires proof that an official disregarded a known or obvious consequence of his or her action. *Estate of Davis v. City of North Richland Hills*, 406 F.3d 375, 381 (5th Cir. 2005). For an official to have acted with deliberate indifference, the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he or she must also draw the inference. *Id.* Deliberate indifference requires a showing of more than negligence or even gross negligence. *Id.* Actions and decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference and do not divest officials of qualified immunity. *Id.*

Lambert failed to allege that any federal or state law imposed a duty on Crist to intervene in the forfeiture action by directing the return of Lambert's vehicle while the

forfeiture action was still pending in state court. To the contrary, Lambert's vehicle became vested in the FHP upon seizure, so Lambert's only avenue of relief was through the procedures set forth in the FCFA. *See* FLA. STAT. § 932.703(1)(c); *Morton v. Gardner*, 513 So. 2d 725, 728 (Fla. 3d DCA 1987).

Furthermore, Lambert failed to allege that Crist had any involvement in or knowledge of the FHP's decision to seize Lambert's vehicle, or the forfeiture proceedings, until after the forfeiture proceedings had commenced and the matter was appealed. Nor did Lambert allege that Crist had any knowledge that Finklea, MacMillan, or Dietz were engaging in unconstitutional conduct, yet through deliberate indifference failed to intervene. While Crist, as the former Attorney General, was ultimately in charge of the Attorney General's Office, Lambert never alleged that he personally supervised the other Respondents. At best, Crist may have had knowledge that his office was advocating on behalf of the FHP in a judicial proceeding that concerned the forfeiture of a vehicle under the FCFA.

Accordingly, Lambert failed to state a claim for which relief could be granted against Crist for supervisory liability, via deliberate indifference, under 42 U.S.C. § 1983. *Jones v. City of Chicago*, 856 F.2d 985, 992 (7th Cir. 1992).

CONCLUSION

The District Court and the Eleventh Circuit Court of Appeals did not err in dismissing Lambert's claims against the Respondents. Moore and Finklea are entitled to qualified immunity, MacMillan and Dietz are entitled to absolute immunity, and Lambert has failed to state a claim upon which relief may be granted against Crist for supervisor liability. Furthermore, probable cause existed to seize Lambert's vehicle, the FHP impound yard's act of mistakenly releasing the vehicle did not mean that the vehicle was no longer forfeitable contraband, and re-seizing the vehicle did not require a warrant supported by probable cause based on new or different facts. Finally, the preliminary hearing provided to Lambert under the FCFA constituted a sufficient post-deprivation remedy, so Lambert's Fourth Amendment and Due Process rights were not violated.

Wherefore, Respondents request that this court deny the Petitioner's Writ of Certiorari.

Respectfully submitted,

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